(13)

NO. 91-1526

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

FERRIS J. ALEXANDER, SR., *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF AMICI CURIAE OF RELIGIOUS ALLIANCE AGAINST PORNOGRAPHY, NATIONAL COALITION AGAINST PORNOGRAPHY, NATIONAL LAW CENTER FOR CHILDREN AND FAMILIES IN SUPPORT OF THE RESPONDENT.

H. ROBERT SHOWERS
(Counsel of Record)

GENE L. MALPAS
National Law Center for
Children and Families
1800 Diagonal Road
Suite 420
Alexandria, Virginia 22313
(703) 684-2011

RELIGIOUS ALLIANCE AGAINST PORNOGRAPHY

Executive Committee

BISHOP GEORGE W. BASHORE
Bishop of Western Pennsylvania
United Methodist Church

HIS EMINENCE JOSEPH
CARDINAL BERNARDIN
Archbishop of Chicago

MRS. SARAH BLANKEN
Vice President,
Women's Leadership
National Coalition
Against Pornography

DR. G. RAYMOND CARLSON
General Superintendent
Assemblies of God

BISHOP HERBERT CHILSTROM
Evangelical Lutheran Church

REVEREND DR.
MILTON B. EFTHIMIOU
Greek Orthodox Archdiocese of
North and South America

DR. EDWARD L. FOGGS
General Secretary
Church of God (Anderson, IN)

BISHOP WILLIAM FREY
The Episcopal Church

DR. JERRY R. KIRK
President
National Coalition
Against Pornography

DR. RICHARD LAND
Executive Director
Christian Life Commission
Southern Baptist Convention

REV. DR. EILEEN W. LINDNER
Associate General Secretary
National Council of Churches

CHIEF JOHN MARACLE
Chief of North American
Native Christian Council

BISHOP GEORGE DALLAS
McKINNEY
Bishop of Southern California
Church of God in Christ

DR. BILLY MELVIN
Executive Director
National Association
of Evangelicals

MR. BRUCE OLSEN
Managing Director, Public Affairs
The Church of Jesus Christ,
Latter-day Saints

COMMISSIONER
JAMES OSBORNE
National Commander
The Salvation Army

MR. MATTHEW PARKER
President
Institute for Black Family
Development

DR. OSCAR ROMO
Director, Div. of Language
Missions
Southern Baptist Convention

DR. MARY O. ROSS
President, Women's Convention
Auxiliary
National Baptist Convention,
U.S.A., Inc.

DR. MARY RUTH STONE
Secretary
Women's Commission
National Association of
Evangelicals

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

Table of Authorities Continued

Page

Table of Authorities Continued

Page

OTHER AUTHORITIES

STATUTES AND RULES

INTEREST OF THE AMICI CURIAE*

The Religious Alliance Against Pornography ("RAAP") is an unprecedented inter-faith alliance, including the senior leaders and executives of nearly 50 faith groups, deno-minations and inter-faith organizations. RAAP members currently serve a constituency of over 100 million U.S. citizens. RAAP is united around two central principles: (1) a deep commitment to the religious and speech freedoms guaranteed by our First Amendment, and (2) the conviction that child pornography and obscenity are evils which should and must be eliminated from American society. RAAP is strongly supportive of federal, state, and local efforts to strengthen obscenity and child protection laws.

The National Coalition Against Pornography is a national non-profit organization which seeks to eliminate child pornography and illegal obscenity city by city across the entire United States through building broad coalitions, raising public awareness and facilitating legal and legislative action.

The National Law Center for Children and Families, a national non-profit law center and clearinghouse which focuses upon legal and research issues surrounding child sexual exploitation and illegal pornography, concentrates on the enforcement of existing laws, the promulgation of the new ordinances and legislation, the defense of such legislation and public/professional education in the areas of sexual exploitation and illegal pornography.

SUMMARY OF ARGUMENT

Prior to the late 1980's, when obscenity and child pornography became predicate acts to RICO, hard-core pornography was a growing and unstoppable profit-center for

---

* A complete description of Amici may be found in the appendix. This brief is submitted with the written consent of both parties, filed with the clerk of this Court.

organized crime. According to law enforcement estimates, "organized crime controlled 85-90% percent of the $8-10 billion per year hard-core pornography industry." The industry abused children, exploited women and devastated communities, all for the sake of profit. Petitioner now basically asks the Court to eliminate obscenity as a RICO predicate and to eviscerate the racketeering provisions of 18 U.S.C. § 1961 et. seq. on the basis of two new theories. First, petitioner alleges that he is somehow proscribed from future exercise of his First Amendment "speech" rights as a result of forfeiting "communicative" assets directly derived from or related to organized criminal activity -- in this instance, the dissemination of explicit hard-core pornography depicting sadomasochism, anal intercourse, torture, group sex, etc. Second, petitioner also claims that this forfeiture, indeed almost *any* forfeiture, constitutes a violation of the Eighth Amendment's proscription of "cruel and unusual punishment," in essence arguing that the racketeering and obscenity violations of which he was convicted are minor infractions. On both assertions, as a matter of constitutional law and clear reading of the facts of this case, petitioner's appeal must be rejected.

The racketeering provisions of 18 U.S.C. § 1961 et. seq. were promulgated to provide government with a strong and realistic weapon against organized crime. Nowhere is the law more needed than to stop the organized criminal enterprises which produce and market obscenity as their third-leading money maker on an international basis. RICO's own legislative history and current law enforcement reality reveal that the majority of hard-core pornography entities are highly organized, utilize multiple fronts, corporate shells and absent directors to hide ill-gotten assets, operate in multiple jurisdictions on a cash, often tax-free, basis and employ intimidation, violence and deception to maintain control. These enterprises have grown exponentially as a result of local law

enforcers' inability to shut down the continuing criminal activity with repeated fines and short jail sentences. As a result, such law enforcement "nuisances" have become a minor incidental cost for the continuing criminal enterprises. The undisputed purpose of RICO is to *stop* multiple criminal activities by jailing the organizers for longer periods, and by forfeiting the organizations' assets which facilitated and encouraged greater criminal involvement. The lower courts, with extremely rare exception, have extended significant latitude in the application of criminal RICO forfeiture provisions against such defendants as petitioner.

The central factor in the instant case is the petitioner's stark inability to separate the concept of forfeiting "communicative" material used in a racketeering enterprise as a *punishment and deterrent* for organized criminal activity from the *prohibition* of future dissemination of presumptively protected material. Petitioner has not been barred *whatsoever* from disseminating "communicative" material in the present or future. He has simply been enjoined from utilizing ill-gotten assets which have a direct nexus to his racketeering enterprise in the dissemination of any future material.

Incredibly, while petitioner seeks to carve out a special exemption for himself and obscenity as a predicate to RICO forfeiture, he flatly refuses to recognize any constitutional concern that his exemption will likewise protect drug cartels, organized gangs or terrorist organizations from hiding their assets as "media businesses" or presumptively protected material. While no law, including RICO, should ban the future exercise of First Amendment rights, no category of racketeering activity should enjoy immunity from forfeiture of ill-gotten assets which are connected to organized criminal activity. Moreover, the impact of such forfeiture on a subsequent exercise of First Amendment rights is negligible. Any criminal enterprise, including hard-core pornography

kingpins and drug lords, are relieved of some *ability* to produce and distribute "communicative" material upon conviction - whether as a function of jail, monetary fines/seizure or forfeiture of assets and materials which may be considered "communicative."

Petitioner's argument that obscenity-based racketeering entities be granted a unique exemption from RICO forfeiture will, if accepted, create a *direct* and *compelling* incentive for organized crime to invest all of their ill-gotten assets in "communicative" entities - specifically cash based, hard-core pornography enterprises which are already well suited to evade taxes. To advocate that those who repeatedly and intentionally violate the law, but do it while involved in a "communicative" business, enjoy a safe harbor for assets acquired through heinous crimes and are immune to RICO is absurd. Taken to its logical conclusion, this absolutist approach to the First Amendment would necessarily eliminate all "communicative" predicates to RICO including mail, wire and security fraud, child pornography, perjury and conspiracy.

That the RICO predicate acts are obscenity violations rather than mail fraud or drug violations is irrelevant. The purpose of RICO forfeiture is "not to restrain the future distribution of presumptively protected speech but rather to disgorge assets acquired through racketeering activity" *4447 Corporation v. Goldsmith*, 504 N. E. 2d 559, 565 (Ind 1987); rev'd on other grounds *sub. nom. Ft. Wayne Books Inc. v. Indiana*, 489 U.S. 46 (1989); or to "divorc(e) guilty persons from the enterprises they have corrupted." *U.S. v. Cauble*, 706 F. 2d 1322, 1350 (5th Cir. 1983), *cert. denied* 465 U.S. 1005 (1984).

Petitioner's claim that the size of his forfeiture, fine and prison sentence is disproportionate to the crime and thus violative of the Eighth Amendment proscription against cruel

and unusual punishment fails miserably when reviewed under the three part analysis provided in *Solem v. Helm*, 463 U.S. 277 (1983). In fact, recently the Court stated in *Harmelin v. Michigan*, 111 S. Ct. 2680, 2705 (1991), that "it forbids only extreme sentences that are 'grossly disproportionate' to the crime" and "(o)utside the context of capital punishment, successful challenges. . . [will be] exceedingly rare," *Solem v. Helm*, 463 U.S. at 289-290.

Despite petitioner's attempt to trivialize the gravity of obscenity offenses by continual references to his inventory as "adult erotica," an overwhelming body of scientific evidence and law enforcement data indicates that these materials are significant contributors to the commission of rape, sexual violence, and child molestation. There is nothing "adult" about pandering sexually violent materials and there is nothing "erotic" about facilitating the sexual abuse and degradation of a woman, child or man for profit. The punishment was entirely consistent, if not too lenient, for the gravity of petitioner's offense, which helped contribute to the risk of sexual assault for millions of women and children.

ARGUMENT

I. RICO FORFEITURES OF "COMMUNICATIVE" ENTITIES INVOLVED WITH RACKETEERING ACTIVITY IS FULLY CONSTITUTIONAL

A. Punishment For Past Criminal Racketeering Activity And Future Deterrence Is Fundamentally Different Than Proscriptions Against Future Communications

Petitioner's argument that the forfeiture of racketeering-related assets which are "communicative" entities is unconstitutional is without merit. His flawed analysis rests on

an inexplicable failure to distinguish forfeiture as a punishment and deterrent for past organized criminal activity from a proscription of disseminating future expressive material. As the Ninth Circuit recently stated in *Adult Video Association v. Barr:*

> **[D]efendants simply have no First Amendment right to use the profits and proceeds from trafficking in obscenity to finance their constitutionally protected speech.**

960 F. 2d 781, 790 (9th Cir. 1992). The purpose of forfeiture is "not to restrain the future distribution of presumptively protected speech but rather to disgorge assets acquired through racketeering activity" *4447 Corporation v. Goldsmith*, 504 N. E. 2d 559, 565 .

Remarkably, petitioner's argument that the forfeiture of racketeering-related assets is impermissible where the forfeited property includes "communicative entities" rests entirely on cited cases in which the situation constituted a prior restraint or prohibited the future exercise of a First Amendment right. However, the RICO forfeiture in this case,

> does not restrain the activities of a person or business in the future; it only takes from them assets that they have accumulated before conviction. Under the schemes at issue here, the convicted person or business is not enjoined from and is legally free to engage in the production and distribution of any expressive material after the forfeiture -- even though expressive material may have been seized.

American Library Association v. Thornburgh, 713 F. Supp. 469, 486 (D.D.C. 1989); see also *United States v. Pryba*, 674 F. Supp. 1504 (E. D. VA. 1987), 900 F. 2d 748 (4th Cir.) *cert. denied*, 111 S. Ct. 305 (1990); *4447 Corporation v. Goldsmith*, 504 N.E. 2d at 565; *Arizona v. Feld*, 745 P. 2d 146 (Ariz. App. Ct. 1987) *cert. denied*, 485 U.S. 977 (1988).

A brief review of the cases petitioner cites to support his contention underscores his flawed reliance on these cases. For example, he cites a series of cases for support which are solely prior restraint cases where materials were seized or speech was halted before any determination was made as to its illegality or harmfulness. See *Vance v. Universal Amusement Co.*, 445 U.S. 308, 316 (1980) (prior restraint impermissible because speech was not yet ruled illegal); *Quantities of Copies of Books v. Kansas*, 378 U.S. 205, 210 (1964) (no prior hearing determining obscenity before seizure was ruled unconstitutional); and *Marcus v. Search Warrant of Property*, 367 U.S. 717, 731 (1961) (warrant to seize alleged obscene materials was impermissible because there were virtually no procedural safeguards). However, as the Ninth Circuit Court of Appeals underscored, these "prior restraint cases do not stand for the proposition that harmful speech can never be punished." *Adult Video Association v. Barr*, 960 F. 2d. at 789. See *Kingsley Books Inc. v. Brown*, 354 U.S. 436, 444-445 (1957) (after finding certain books obscene, the court enjoined defendant from future dissemination of these books as a penalty, not a prior restraint) and *Sequoia Books Inc. v. Ingemunson*, 901 F. 2d. 630, 636 (7th Cir.) *cert. denied*, 111 S. Ct. 387 (1990) (Court found Illinois forfeiture law was not an attempt to regulate sale of protected materials or to close bookstores, but simply to punish defendant for past obscenity convictions).

Second, petitioner claims that if an obscenity violation had occurred in *Arcara v. Cloud Books, Inc.*, 478 U.S. 697 (1986), the Court would have demanded First Amendment scrutiny. In reality, the Court indicated that if the ability to disseminate First Amendment material was hindered, then "close scrutiny" would be required. The huge distinction between these two perspectives is painstakingly ignored by the petitioner. In the instant case, the imposition of the RICO forfeiture removed the petitioner's ill-gotten gain, but in no way interfered with his future right to exercise his First Amendment prerogative.

Third, petitioner uses *Ft. Wayne Books v. Indiana* to support his premise by stating that this Court held that a pre-trial seizure of presumptively protected material is unconstitutional, if the purpose of the seizure is to "put an end to the sale of obscenity." 498 U.S. 46, 67 (1989). However, in the present case petitioner did not face a pre-trial confiscation of his materials. The seizure came only after 1) a jury trial in which he was found guilty of racketeering and 2) after a forfeiture hearing was conducted under the "beyond the reasonable doubt" standard. These "safeguards" remove petitioner's case completely from his analysis under *Ft. Wayne Books* and leave us with a punished "racketeer" who is still able to exercise his First Amendment rights in the future, albeit, with a little less panache.

Fourth, petitioner equates the facts in *Simon & Schuster Inc. v. Members of the New York State Crime Victims Board*, 112 S. Ct. 501 (1991) to the instant case. Once again, the fact that petitioner is not precluded from exercising the First Amendment rights in this case is ignored. *Simon & Schuster*, which held unconstitutional the Crime Victims Board's attempt to disallow monetary gain from the "fruits of the crime" under New York's "Son of Sam" law, infringed upon the exercise of present First Amendment rights. However, in

this case, where the assets of racketeering activity involved forfeiture of communicative property, there is no usurpation of a present right to exercise a First Amendment prerogative and at best only a negligible impact upon any future exercise.

In short, the "Son of Sam" law in *Simon & Schuster* created a financial disincentive to exercise present speech rights by "singl[ing] out income derived from expressive activity for a burden the State places on no other income," and by targeting "only ...works with a specified content." 112 S. Ct. at 508. By contrast, the RICO forfeiture provisions do not create a financial disincentive to speak or write, nor do they target present expressive activities whatsoever; they merely "preclude ...defendants from using assets derived from [racketeering] to subsidize future speech," *Adult Video Association v. Barr*, 960 F. 2d. at 790.

The petitioner is also not helped by his wrongful reliance on *Near v. Minnesota*, 283 U.S. 697 (1931) which is advanced to buttress the main thrust of petitioner's entire argument. *Near* involved a Minnesota law which provided that the publication or sale of "malicious, scandalous and defamatory" periodicals were a nuisance and could be enjoined. The Court in *Near* held that such a law acted as a prior restraint because the newspaper was permanently enjoined from publishing and conducting any further business under its own name and title. Unlike the RICO forfeiture provisions in the instant case, the purpose behind the Minnesota statute in *Near* "[was] not punishment... but suppression of the offending newspaper or periodical." -- simple prior restraint. 283 U.S. 697, 711 (1931). Contrary to *Near*, the petitioner here is free to engage in any First Amendment protected activity after the forfeiture. The communicative material in this case was forfeited simply because it was an asset used in the racketeering enterprise, not for the purpose of suppressing it. When one compares the

situation in *Near* with a forfeiture of communicative entities involved in racketeering activity, it is clear why the Fourth Circuit explained in *United States v. Pryba*, 900 F. 2d at 754-755, "*Near* has no application to obscenity and sheds no light" on the question of the constitutionality of RICO Forfeiture in obscenity cases.

All the above reviewed cases are easily distinguishable from the petitioner's case because they directly hinder or prohibit the exercise of present and future First Amendment rights, while the RICO Forfeiture in the instant case simply punishes prior criminal acts. In spite of the petitioner's protestations to the contrary, it was recently settled by this court that using obscenity violations as predicate acts in RICO is constitutional. *Ft. Wayne Books, Inc. v. Indiana*, 489 U.S. 46 (1989). In *Ft. Wayne Books*, the Court recognized that the prison sentence and fine authorized by the state RICO statute at issue was more severe than those authorized for a simple obscenity offense. As a result, some book sellers might "practice self-censorship and remove First Amendment protected materials from their shelves." 489 U.S. at 60. The Court held, however, that "deterrence of the sale of obscene materials is a legitimate end of state anti-obscenity laws." *Ft. Wayne Books*, 489 U.S. at 60. Further, the Court concluded that "any form of criminal obscenity statute applicable to a bookseller will induce some tendency to self censorship and have some inhibitory effect on the dissemination of materials not obscene." Id., quoting *Smith v. California*, 361 U.S. 147, 154-155 (1959).

The analysis in *Ft. Wayne Books*, which concluded that obscenity violations are viable predicate acts, is the same as applied to the RICO forfeiture provisions at issue here. Each of the lower courts which have examined this precise issue have concluded that any possible "chilling effect" from obscenity-based RICO forfeiture, like from obscenity

predicates, is an "inevitable consequence of the criminal law's legitimate efforts to deter and to punish obscenity." *Adult Video Association v. Barr*, 960 F. 2d at 786. The Ninth Circuit further explained that "[b]ecause a RICO forfeiture occurs only after a criminal trial on the obscenity issue, with its full panoply of procedural protections, the forfeiture represents punishment for engaging in obscenity rather than a prior restraint." 960 F. 2d at 789. In a similar case in which it discusses whether the fines levied as a result of an obscenity violation would chill First Amendment rights, the Ninth Circuit again concluded that "whatever chill may arise from Arizona's felony fine system, properly understood, is attributable to the state's legitimate deterrent goal." *Polykoff v. Collins*, 816 F. 2d 1326, 1340 (9th Cir. 1987).

Apparently, petitioner in this case simply does not want to be held accountable for his criminal actions, no doubt because he finds himself ensnared in a web of racketeering which has now left him with significantly less resources and in prison. Hopeful that the "smoke and mirrors" approach of pleading a violation of his freedom of speech will confuse the issue, petitioner continually mixes punishment and prior restraint without making any distinction.

This Court, however, is faced with the same basic problem that the Ninth Circuit faced in *Polykoff* when they concluded that "those who conduct their affairs close to the boundary of proscribed activity necessarily incur some risk" *Polykoff*, 816 F. 2d at 1340. A forfeiture penalty is no more chilling than a prison sentence or a fine, in that if the indictment in the present case was only for obscenity offenses, petitioner would have been subject to 60 years imprisonment and a fine of $3 million – a prospect at least as "chilling" as the RICO forfeiture imposed here. The Eighth Circuit Court of Appeals in the instant case stated, "we reject Alexander's argument that the forfeiture provisions have an

unconstitutionally chilling effect on First Amendment rights." *Alexander v. Thornburgh*, 943, F. 2d 825, 834, (8th Cir. 1991). This Court should likewise firmly reject the same notion.[1]

Finally, in a case closely on point, the Fourth Circuit in *United States v. Pryba*, 900 F. 2d 748 (4th Cir.) *cert. denied*, 111 S. Ct. 305 (1990), held that RICO forfeiture is a legitimate criminal punishment and deterrent. Specifically addressing the possibility of seizing communicative material, the Court held that "forfeiture... does not violate the First Amendment even though certain materials, books and magazines that are forfeited may not be obscene and in other circumstances would have constitutional protection." *Pryba* 900 F. 2d at 755. The Court goes on to state that the establishment of a "nexus...between defendants ill-gotten gains from their racketeering activities and the presumptively protected material" is all that is required to forfeit the entire enterprise. Id.

In sum, there are four distinct reasons for criminal sanctions: 1) punishment, 2) deterrence, 3) rehabilitation, and 4) warehousing. While it is obvious that the forfeiture provisions of RICO are not intended for rehabilitation and warehousing of the defendant, it is also clear that they are intended for punishment and deterrence. Punishment is accomplished by confiscating the proceeds and the property obtained through the illegal racketeering activity. Deterrence is

[1] Petitioner's assertion to the Court that RICO forfeiture of his racketeering-related "communicative" entities is unconstitutional because it "deprived [the public] of most of the local media outlets for obtaining constitutionally protected erotic materials," Pet. Brief at 30, is patently false. A basic survey of Minneapolis/St. Paul businesses identifies dozens which are actively involved in the commercial dissemination of hard-core pornography and hundreds more in the business of disseminating "erotic" materials.

achieved by sending a clear message to those contemplating criminal enterprises that all one gains through racketeering activity is in jeopardy of being confiscated by the government. "The purpose of the [RICO] forfeiture is to strip the defendant of the tools and profits of criminal conduct and thereby terminate the criminal enterprise." *Adult Video Association v. Barr*, 960 F. 2d at 790. In short, "crime does not pay."

Prior restraint, on the other hand, is a prohibition. It differs greatly from criminal sanctions in that prior restraint does not look to what has been done, but what might be done. No action by the government has interfered with petitioner's freedom to exercise his First Amendment rights and the petitioner is free to disseminate any non-obscene communicative material he chooses. He may take full advantage of his right to speak freely. It is intellectually dishonest to deny the difference between the instant case, in which RICO forfeiture punishes and deters criminal activity, and those cases which prohibit prior restraint. RICO forfeiture of any entity is intended solely for punishing and deterring organized crime activity and is not intended to be a prior restraint, or even a prohibition, on future dissemination of presumptively protected material. At best, RICO forfeiture of petitioner's racketeering-related assets may prove to be a hindrance, albeit a negligible one, simply because it has removed his *ability* to use his ill-gotten assets to engage in such dissemination.

B. RICO And Its Forfeiture Provisions Are Critical To Any Realistic Law Enforcement Against The Organized Crime Controlled Obscenity Industry

> "Organized crime involvement in pornography is indeed significant and there is an obvious national control, directly and indirectly, by organized crime figures in the United States.

> Few pornographers can operate in the United States independently of involvement with organized crime".

Final Report of the Attorney General's Commission on Pornography at 1070-1071 (1986). This conclusion by the 1986 Commission on Pornography adopted the Federal Bureau of Investigation's analysis done in 1978. The FBI analysis uncovered numerous organized crime activities associated with pornography, including prostitution, gambling, murder, acts of violence, extortion, illegal guns and public corruption. According to the Los Angeles Police Department, "organized crime infiltrated the pornography industry in Los Angeles in 1969 due to its lucrative financial benefits. By 1975, organized crime controlled 80 percent of the industry and it is estimated that this figure is between 85 to 90 percent today." 1986 Commission on Pornography, *Los Angeles Hearing Volume I*, Robert Peters, page 32. Cited in the *Final Report of the Commission on Pornography* at 1048-1049.

Racketeering provisions of 18 U.S.C. § 1961 et. seq. were promulgated to provide government with a strong and realistic weapon against organized crime. Since obscenity is estimated to be organized crime's third leading money maker and is distributed on an international basis there are few, if any areas, where RICO and its forfeiture provisions are more badly needed and appreciated than in the highly organized pornography industry. The jury in this case found, beyond a reasonable doubt, that *Alexander* violated three of the four subdivisions of Title 18 U.S.C. , Section 1962, which are the basis of the racketeering counts. The jury further found that *Alexander* violated the federal obscenity laws on 12 separate occasions involving four magazines and 3 videotape cassettes which form the predicate acts.

From the government's statement of facts, it is clear that the petitioner utilized numerous corporate shells, multiple fronts, fictitious names and absent directors to secrete his true identity and ownership, as well as his ill-gotten assets from government discovery. It is also clear from the record that the magnitude of petitioner's hard-core pornography business (which he now values before this Court at more than $25 million in assets despite earlier claims of under $10 million) was formidable to any local law enforcement group. He would not have been effected by short jail terms for the clerks or small fines to the corporate entities. In fact, prior to obscenity becoming a predicate for federal RICO in October 1984, few federal authorities or state law enforcers would even attempt to investigate or prosecute such a complex and massive organized criminal entity, since the cost would far outweigh any potential of ever stopping the organized criminal activities. The main purpose of RICO was to stop multiple criminal activities engaged in by such large enterprises by jailing the organizers for longer periods and by forfeiting the organization's assets which facilitated and encouraged greater criminal involvement. One hundred and twenty witnesses, 700 Exhibits and three months of trial were needed to substantiate petitioner's simple but extensive deception and complex organization. His case firmly underscores the difficulty of utilizing normal criminal laws against such a large, organized criminal organization.

In the case at bar, RICO and its forfeiture accomplished what no other criminal obscenity or tax law has achieved in 30 years - it brought a stop to the multiple criminal violations which were perpetrated by and through the petitioner's organization. " It may be true that stiffer RICO penalties will provide an additional deterrent to those who might otherwise sell obscene material, ... but deterrence of the sale of obscene materials is a legitimate end of state anti-obscenity laws." *Ft. Wayne Books, Inc. v. Indiana*, 489 U.S. at 60.

Thus, the very purpose of obscenity-based RICO has had the desired effect from its first application in *Pryba* to the instant case. Entire organizations have been stopped, with millions of dollars of assets forfeited and decades of criminal activity halted. Without RICO and its forfeiture provisions, these illegal enterprises would continue to prosper and grow, with no remedy for conerned citizens, communities and law enforcers in sight.

C. The Only Requirement Necessary For Forfeiture Of A "Communicative" Entity Is Any Nexus Between Property And The Criminal Enterprise's Racketeering Activity

As we have discussed, the petitioner was convicted of 3 of the 4 subdivisions of racketeering under Title 18, U.S.C., § 1962 along with 12 counts of obscenity violations and numerous tax violations. The jury found that petitioner gained influence over various enterprises he was involved in through the millions of dollars generated per year from his pornography business and, thus, forfeited the ill-gotten gain of his criminal enterprise to the government. In the forfeiture order entered in this case, the district court found that all the forfeited property constituted either proceeds of racketeering activity, substantially facilitated the racketeering activity, or supported the RICO scheme by providing the means and methods of transporting and selling obscene material. Pet. Brief at 59. Such an order is within the clear purview of 18 U.S.C. § 1963, (a)(1) (assets which petitioner had acquired and maintained from racketeering activity), 18 U.S.C. § 1963 (a)(2) (assets which afforded him a source of influence over the enterprise) and 18 U.S.C. § 1963 (a) (3) (assets which constituted or were derived from proceeds he had obtained directly or indirectly from the racketeering activity). On a facial challenge to the RICO forfeiture, however, the Ninth

Circuit decided in *Adult Video Association v. Barr* that "those assets or interests of the defendant invested in legitimate expressive activity being conducted by parts of the enterprise *uninvolved* or only *marginally involved* in the racketeering activity may not be forfeited. " 960 F. 2d at 791 (emphasis added). The court permitted forfeiture of "assets actually used in connection with the obscenity offense -- that is used to produce market or move obscenity through interstate commerce, and assets and interests substantially financed, directly or indirectly, by the proceeds of the criminal activity." Id.

While we disagree with the Ninth Circuit's constitutional conclusion, it is clear that an order of forfeiture in the instant case does not appear to fall outside the permissible scope of forfeiture even under the *Adult Video Association v. Barr* ruling. Moreover, it does not fall outside the scope of the clear meaning of the words in 18 U.S.C. §§ 1962-1963. In *Ft. Wayne Books*, the Court addressed the post conviction forfeiture question when it said, "[w]e assume without deciding that bookstores and their contents are forfeitable (like other property such as a bank account or a yacht) when it is proved that these items are property actually used in, or derived from a pattern of violation of the State's obscenity laws." 489 U.S. at 65. The stores from which the obscene videos and magazines were sold are certainly a central part of the enterprise and thus, *all* the petitioner's inventory is forfeitable. See *United States v. Littlefield,* 821 F. 2d 1365, 1367 (9th Cir. 1988).

Second, the bank account, real estate and other items forfeited also appear to come from the proceeds of the petitioner's business and were so adjudicated by a judge and a jury using the "beyond a reasonable doubt" standard. "The RICO forfeiture is *in personam*: a punishment imposed on a guilty defendant deprives that defendant of all the assets that

allow him to maintain an interest in the RICO enterprise regardless of whether those assets are themselves tainted by the use and connection with the racketeering activity." *United States v. Cauble*, 706 F. 2d 1322, 1349 (5th Cir. 1983). Even in *Adult Video Association*, a case petitioner relies upon heavily, the appellate court states, "thus, unlike prior restraint, it is the defendant's unlawful conduct (dealing in obscenity) rather than the defendants anticipated speech that sets into motion a RICO forfeiture." 960 F. 2d at 790. See *American Library Association v. Thornburgh* 713, F. Supp. 469, 486 (D.C. Cir. 1989) (forfeiture does not restrain the activity of the person or the business in the future; it only takes from them assets that they have accumulated before conviction). Thus, this court should not disturb the jury and court's finding that any communicative assets which have a *nexus* with the criminal enterprise's racketeering activity for which petitioner was convicted should be forfeited. A diminution in scope of RICO forfeiture will dilute the statute's deterrent effect and significantly risk a continuation of the criminal enterprise.

Finally, the most troubling aspect in the instant case is the petitioner's claim is that a sliding scale should be employed when proving a nexus between forfeitable property and the criminal enterprise when obscenity is involved. In essence, according to the petitioner's theory, the number of racketeering acts which must be proven in a RICO obscenity case is different from other RICO cases and is directly proportional to the scale of the enterprise itself.

Petitioner further argues that the larger the seizure the higher the government's burden of proof. Pet. Brief at 21-22. Thus, when taken to its logical conclusion, the larger and more diverse a criminal organization becomes, the less likely would be the possibility of a successful RICO forfeiture action. In short, this is a clever guise to persuade this Court to rule that businesses involved in "communicative" material are immune

from RICO forfeiture provisions. As petitioner elaborates, "even if one assumed that every single book and videotape in a forfeited store were obscene, the forfeiture of the real and personal property used in or necessary for dissemination of future presumptively protected expression would still, and in every case suppress the business' ability to engage in future presumptively protected expression." Pet. Brief at 30. In essence, the petitioner sees no time when removing the instrumentalities of a crime is appropriate for people involved in even obscenity trafficking, let alone forfeiting "communicative" assets directly involved in racketeering activity.

Two lower courts have easily seen through the absurdity of petitioner's argument.

> **To follow the defendant's argument would allow criminals to protect their loot by investing it in newspapers, magazines, radio and television stations. Carried to its logical end, this reasoning would allow the Colombian drug lords to protect their enormous profits by purchasing the *New York Times* or the Columbia Broadcasting System.**

Pryba, 900 F. 2d at 755; *Adult Video Association v. Barr*, 960 F. 2d at 790. Despite the petitioner's insistence that only those items specifically adjudicated as obscene can be forfeited, this court should adopt the more reasoned view that "the fact that some of the materials forfeited are not obscene does not protect them from forfeiture when the procedures established by RICO are followed. *Pryba*, 900 F. 2nd at 756. "Differentiating between those parts of a RICO enterprise engaged in racketeering activity and those that are not is not a requirement under this statute for determining whether

defendant's interest is subject to forfeiture" *United States v. Walsh*, 700 F. 2d 846, 857 (2nd Cir.) *cert. denied*, 464 U.S. 825 (1983); *United States v. Anderson*, 782 F. 2d 908, 917 (11th Cir. 1986) (entire building confiscated even though a completely innocent and unrelated business entity rented the basement). Furthermore, "properties that are owned by a RICO participant and used by him to further the affairs of the RICO enterprise afford the owner/participant a source of influence over the enterprise and thus are subject to forfeiture" *United States v. Zielie*, 734 F. 2d 1447, 1459 (11th Cir. 1984) *cert. denied sub. nom., United States v. Gustafson*, 469 U.S. 1189 (1985). Under the RICO provisions of 18 U.S.C. § 1962 and the case law, **all** of the petitioner's forfeited property in the instant case meets the standards necessary for RICO forfeiture.

D. Creation Of A Special Exemption For "Communicative" Entities From RICO Forfeiture Will Provide Compelling Incentive For Organized Crime To Invest All Ill-Gotten Assets In This Newly Protected Category

The first step in the petitioner's attempt to seduce the Court into creating a special exemption for all "communicative entities" as immune from RICO forfeiture is his claim that any effect on "communicative material" is violative of the First Amendment. In an attempt to support his proposition the petitioner cites numerous types of state action which specifically restricted expressive activity such as padlocking a business where obscenity offenses occurred in the past or revoking a business license because of the obscenity violation. See *Vance v. Universal Amusement Company*, 445 U.S. 308 (1980) and *City of Paducah v. Investment Entertainment Inc.*, 791 F. 2d 463 (6th Cir.) *cert. denied*, 479 U.S. 915 (1986); *Arcara v. Cloud Books*, 478 U.S. 697 (1986); *Gayety Theaters Inc. v. City of Miami*, 719

F. 2d 1550 (11th Cir. 1983); *Entertainment Concepts Inc., III v. Maciejewski*, 631 F. 2d 497 (7th Cir. 1980) *cert. denied*, 450 U.S. 919 (1981); *State v. Bauer*, 768 P. 2d 175 (Ariz. App. Ct. 1988), *cert. denied*, 493 U.S. 1042 (1990). However, none of these cases prohibits the forfeiture of racketeering-related assets which involved communicative materials protected by the First Amendment.

For example, in *Vance v. Universal Amusement Company*, 445 U.S. 308 (1980) the Court struck down a future prohibition against a movie theater that was being restrained from showing movies due to prior problems with obscene films. However, the missing procedural safeguards required by the Court in *Vance* were present in *Alexander*, where the RICO forfeiture did not occur until after the jury "beyond a reasonable doubt": 1) convicted petitioner of numerous predicate offenses, 2) convicted defendant of racketeering activity and 3) found a nexus between the forfeited property and the racketeering activity. Even the Ninth Circuit Court in *Adult Video Association* acknowledges "the protections contained in the criminal RICO prosecution -- such as the allocation of the burden of proof, heightened standard of proof and adversariness -- satisfy Bantam's commands." 960 F. 2d at 789 *citing Bantam Books, Inc. v. Sullivan*, 372, U.S. 58 (1963).

In *Arcara*, which involved the forfeiture of a bookstore used as a front for prostitution, this Court distinguished between prior restraints and legitimate punishments by acknowledging that bookstore owners were free to disseminate communicative materials in the future (just as petitioner is) and that the forfeiture itself is only a punishment for prior bad behavior. 478 U.S. at 705. "Neither the press nor book sellers may claim special protection from governmental regulations of general applicability simply by virtue of their First Amendment protected activities." Id.

If the Court adopts this illogical and dangerous argument that "communicative" assets are immune from RICO forfeiture, drug lords and other organized criminals would waste no time in investing in businesses like bookstores, newsstands, publishing houses and broadcasting entities thus insulating their criminal proceeds from seizure. *Pryba*, 900 F. 2d at 755; *Adult Video Association v. Barr*, 960 F. 2d at 790. Moreover, hard-core pornography businesses would then become a perfect shielded "communicative entity" for organized crime to invest its money since they are already set up to ideally facilitate their tax evasion. Thus, creation of such a special exemption will not only shield organized crime's assets from any RICO forfeiture but will also exacerbate the growing $8-$10 billion a year pornography industry to the ultimate harm of children, women and communities who suffer from their blight.

E. Any Absolutist View That Supports A Forfeiture Exemption Of "Communicative" Assets Would Logically Also Eliminate All "Communicative" Predicate Acts of RICO Including Mail, Wire And Security Fraud, Child Pornography And Conspiracy

Petitioner attempts to convince the Court to carve out a special exemption from racketeering forfeiture for himself and hard-core pornography enterprises. However, there is no logical distinction between obscenity-based racketeering and racketeering predicated on any other *illegal*, but arguably "communicative," racketeering predicate. These would necessarily include mail, wire and security fraud, child pornography, perjury and conspiracy, each of which is "communicative" in nature and a predicate to RICO statutes. In spite of petitioner's implication otherwise, engaging in

activity in violation of obscenity statutes simply has no protected element.

For instance, there is no functional difference between child pornography and obscenity as a predicate for RICO forfeiture. The two differ only in their subjects and the specific victims of the criminal acts. Both involve engaging in an activity that has *no* protected expressive element.

Simply put, petitioner's view of the First Amendment is **absolute** and completely unrecognizable in the precedents of this Court. It would require setting aside entire categories of criminal activity from any threat of effective law enforcement. It would also offer almost total protection for criminal obscenity enterprises which now flourish in spite of the law in every region of the United States.

II. APPLICATION OF RICO FORFEITURE TO PETITIONER'S ASSETS DOES NOT VIOLATE THE EIGHTH AMENDMENT PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT

A. Forfeiture of Petitioner's Property Is Consistent With *Solem v. Helm* 3-Part Analysis And Not Grossly Disproportionate To The Crime

When petitioner's sentence and forfeiture is reviewed under the three-part analysis provided in *Solem v. Helm*, it is consistent with both the Eighth Amendment's proscription of "cruel and unusual" punishment and the gravity of the petitioner's offense. As the Court recently stated in *Harmelin v. Michigan*, 111 S. Ct. 2680, 2705 (1991), "it forbids only extreme sentences that are 'grossly disproportionate' to the crime" and "[o]utside the context of capital punishment, successful challenges. . . [will be] exceedingly rare," *Solem v. Helm*, 463 U.S. at 289-290.

Petitioner argues before the Court that an aging man was unfairly stripped of his 30-year-old business for distributing several relatively harmless video tapes and magazines. He implies that the scope of his obscenity and racketeering violations were minor as a direct function of the number of items found obscene during trial. He makes not a single mention of the specific content of the unprotected obscene videotapes or magazines, providing no evidence in support of their implied harmlessness.

First, petitioner's age is irrelevant to any consideration of the severity of his crime. *All* members of society are expected to adhere to the law and *all* are subject to punishment if they fail to obey the law. Second, virtually all criminal racketeering enterprises that have been dismantled as a result of RICO forfeiture have been so disassembled by relatively small portions of their illegal enterprises coming to the surface.

For example, a drug dealer who is arrested selling over a gram of cocaine on two separate occasions can be prosecuted under the racketeering laws and find himself separated from his wealth. Likewise, a person involved in mailing fraudulent material can be required to forfeit all he possesses for mailing only a few letters involving small amounts of money. Each of these examples would appropriately be subject to the same procedural scrutiny that was afforded petitioner's case. Like petitioner, if they were found to have engaged in a pattern of criminal activity, their property that was shown to have a nexus to the criminal enterprise would be subject to forfeiture. Petitioner's claim that he "believed" the illegal material he distributed extensively was protected has been spoken to already by the jury and is meritless.

In *Solem v. Helm* the Court has provided the three-step analysis necessary to decide if the Eighth Amendment has been violated:

(1) A comparison of the gravity of the offense and the harshness of the penalty,
(2) A comparison of the sentence imposed for the same or similar offenses, and
(3) A comparison of the sentence imposed for the same or similar offenses in other jurisdictions.

Solem v. Helm, 463 U.S. 277 (1983). However, the court also provided a strong proviso on the review when it noted that the court may only consider, "whether the sentence... is within constitutional limits." 463 U.S. at 290 N. 16.

In the instant case, the petitioner had a business empire that, by his own admission, consisted of numerous hard-core pornography outlets providing thousands of videotapes and magazines. Petitioner even claims that his holdings were worth in excess of $25 million. The jury in their deliberations concluded that a nexus existed between the petitioner's criminal enterprise and these assets.

The first prong of *Solem v. Helm* requires a comparison of the crime with the punishment. The obscene materials were distributed through most (if not all) of the forfeited properties and the inventory seized, while not adjudged obscene, was of a similar character (sexually explicit in nature). The government was prepared to offer into evidence additional magazines and videotapes, yet appellant's counsel objected on grounds of relevance. Appellee's Brief at 35. Finally, the machinery and the funds seized where adjudged either materials used in furtherance of the criminal enterprise or proceeds from the criminal enterprise. The jury verdict indicated that the racketeering activity and the criminal

enterprise was significant and therefore authorized a significant forfeiture.

The second prong of *Solem v. Helm* requires a comparison between penalties for the same or similar offense. A similar case has recently been concluded in Las Vegas in which Reuben Sturman, whose criminal racketeering enterprise is akin to petitioner's, was given a very similar punishment. Sturman was fined significantly ($1 million), he was sentenced to substantial jail time (4 years) and significant amounts of property were confiscated (approximately $10 million in property). It is should be noted that the *Sturman* case was heard in the Ninth Circuit, where *Adult Video Association v. Barr* was adjudicated. Despite this, petitioner cites *Adult Video Association* numerous times in an attempt to convince this Court to strike down the jury's verdict.

The final prong of *Solem* is met by reviewing *Arcara*, 478 U.S. 697 (1986) (the entire bookstore was confiscated), *Walsh*, 700 F. 2d 846 (2nd Cir.) *cert. denied*, 464 U.S. 828 (1983)(defendant's entire interest in an engineering firm was confiscated), *Littlefield*, 821 F. 2d 1365 (9th Cir. 1987) (entire 40 acres of property seized despite the fact that only a portion was used to grow marijuana), *Cauble*, 706 F. 2d 1322 (5th Cir. 1983) (the defendant's entire interest in Cauble Enterprises was forfeited), *Anderson*, 782 F. 2d 908 (11th Cir. 1986) (an entire building used in the enterprise was confiscated even though part of it was definitely not involved), *Zielie*, 734 F. 2d 1447 (11th Cir. 1984) *cert. denied, sub. nom., United States v. Gustafson*, 469 U.S. 1189 (1985) (all of defendant's property and money that had a nexus to drug dealing was forfeited), and, of course *Pryba*, 900 F. 2d 748 (4th Cir.) *cert. denied*, 111 S. Ct. 305 (1990) (the defendant's entire interest in businesses, including real estate, money and "communicative" material forfeited).

The petitioner implies in his brief that he was given a "harsh" penalty but a comparison with his possible sentence indicates otherwise. Petitioner faced a possible 171 years in prison and fines totaling $6.4 million. He received a jail term of 6 years and a fine of $100,000. Furthermore, the evidence clearly demonstrated that petitioner had other sources of income, including movie theaters and real estate. In addition, the income from these properties was traceable to AB Distributors, petitioner's primary business, which the government never sought to forfeit despite the jury's finding of a nexus.

The jury in *Alexander* was bound by the highest standard in American jurisprudence when exploring not only the question of petitioner's guilt but also the nexus between the property and the criminal enterprise. This court should "[hold] that the forfeiture prescribed by 18 U.S.C. §1963 is neither cruel nor unusual, and the Eighth Amendment does not prohibit its application." *United States v. Thevis*, 474 F. Supp. 134, 141 (N.D. Ga. 1979) *aff'd*, 665 F. 2d 616 (5th Cir.) *cert. denied, sub. nom., United States v. Evans*, 456 U.S. 1008 (1982).

B. Petitioner's Larger Agenda To Trivialize Obscenity As An Insignificant Crime Is Exposed As Nonsense When The Overwhelming Evidence Of Its Harm And Victimization Is Examined

Petitioner's brief makes not a single reference to the specific content of the obscene materials he was found guilty of distributing through his massive racketeering enterprise. He describes his inventory variously as "erotic materials," "adult erotica," "communicative," "media items," "expressive," "erotic speech," etc. Pet. Brief at 3, 4, 5, 6, 7, 11, 20. He refers specifically to the materials found obscene, beyond a reasonable doubt, by a jury of his peers as "erotic

magazines and videotapes." Pet. Brief at 40. Lastly, having struggled to only reference the obscene material with patently ridiculous euphemisms, petitioner presumptively asserts, without offering a shred of scientific evidence, that "obscenity [is] a victimless and relatively nonserious crime." Pet. Brief at 45. The only support offered by petitioner for this assertion is that the pornographic materials he panders are popular and sell well. His argument is directly analogous to a drug kingpin who asserts that because the cocaine he sells is popular and lucrative, selling it is therefore *victimless* and a *relatively nonserious offense*.

In just the past five years, materials involved in obscenity prosecutions have included the mutilation and burning of genitals, the sexual torture of "models" dressed as children, bestiality, rape, the forcing of inanimate objects (baseballs, cans, etc.) up the torn rectums of victims, sadomasochism, etc. Titles prosecuted have included "Bleed Little Girl Bleed," "Little Boy Snuffed" and "Taboo" (incest).

Materials introduced into petitioner's trial included "Leather Sleaze," "Ass Masters Special #3" and "Hot Slut Orgies." Petitioner himself asserts that the content of the materials he pandered are "indistinguishable" from thousands of other (heinous) materials currently pandered in the hard-core pornography market. Pet. Brief at 46.

An ***overwhelming*** body of scientific evidence and law enforcement data indicates that these materials (hard-core and child pornography) are significant contributors to the commission of rape, sexual violence, and child molestation. Despite petitioner's inconceivable assertions otherwise, there is nothing "adult" about pandering sexually violent materials and there is nothing "erotic" about facilitating the sexual abuse and degradation of a woman, child or man for profit.

The relationship of pornography to child sexual abuse is compelling. A recent study of arrests for sex crimes against children (extrafamilial child sexual abuse cases) from 1980-1989 revealed that pornography was discovered in eighty-eight percent (88%) of cases, with child pornography recovered in over twenty-three percent (23%) of the cases. According to the study, "Clearly pornography is an insidious tool in the hands of the pedophile population. The study merely confirms what detectives have long known: that pornography is a strong factor in the sexual victimization of children." Ralph W. Bennett, "The Relationship Between Pornography and Extrafamilial Child Sexual Abuse," *The Police Chief*, 19 (February 1991).

A 1983 study by Dr. William Marshall found that eighty-seven percent (87%) of the molesters of girls and seventy-seven percent (77%) of the molesters of boys admitted to regular use of pornography. W. Marshall, *Report on the Use of Pornography by Sexual Offenders*, Report to the Federal Department of Justice, Ottawa Canada (1983).

With respect to rape, the statistics and studies mirror those that examine the issue of child sexual abuse. Eighty-six percent (86%) of rapists studied admit to consumption of hard-core pornography, with fifty-seven percent (57%) admitting imitation of actual scenes from the material in the commission of their crimes. W. Marshall, *Use of Sexually Explicit Stimuli by Rapists, Child Molesters and Non-Offenders*, 25 J. of Sex Research 267 (1988). Dr. James Mason, current head of the U.S. Public Health Service, noted after his examination of the impact of pornography:

> [P]ornography is a serious social threat. When pornography becomes influential culturally, and especially when it begins to shape attitudes and habits, we see respect for people erode,

> violence becomes more acceptable, and marital commitments deteriorate. Pornography creates a fantasy world where people are of secondary importance. Pornography is enslaving for some and makes victims of others. It is not, as the literature of the 1970's argued, a "victimless" crime. Furthermore, among fair-minded men and women, the harm of pornography is not controversial. It is clear that its effects on *society*, the *family*, and the *individual* are overwhelmingly and quantitatively adverse.

J. Mason, *The Harm of Pornography*, Speech Transcript, pub. by U.S. Department of Health and Human Services (October 1989).

Petitioner's punishment was entirely consistent, if not too lenient, for the gravity of petitioner's offense, which helped contribute to the risk of sexual assault for millions of women and children in the United States. It is unconscionable that despite the gravity of these offenses, he continues to assert even before this Court that his crimes are "victimless."

CONCLUSION

The Eighth Circuit Court of Appeals' decision in the present case should be upheld because it is imperative that organized criminal enterprises be effectively combated. The best weapon available to the government to end decades of unrestrained obscenity-based racketeering is the RICO forfeiture provision, and it should not be weakened by carving out a judicial sanctuary for criminal enterprises simply because they are involved with "communicative" material.

Respectfully submitted,

H. Robert Showers
(Counsel of Record)

Gene L. Malpas
National Law Center for Children and Families
1800 Diagonal Road, Suite 420
Alexandria, Virginia 22313
(703) 684-2011

APPENDIX

APPENDIX

DESCRIPTION OF AMICI

The Religious Alliance Against Pornography

The Religious Alliance Against Pornography ("RAAP") was founded in July, 1986 by Dr. Jerry Kirk, President of the National Coalition Against Pornography, His Eminence Joseph Cardinal Bernardin, Archbishop of Chicago and dozens of senior religious leaders who gathered in New York to address the role of hard-core and child pornography in a wide range of health, safety, and moral concerns. These included the relationship of pornography to child molestation, sexual violence, sexually transmitted diseases, rape and human exploitation.

RAAP members include highest-level leaders in the Roman Catholic, Jewish, Protestant, Greek Orthodox and Mormon communities. Collectively, they serve over one-hundred million citizens throughout the United States. RAAP is likely the broadest religious alliance to ever address any social concern in the United States.

Believing that the human person is created in God's image and likeness, and that human life is sacred, RAAP leaders address a broad range of life threatening and life diminishing issues within their faith groups. The purpose of RAAP is to bring into clear focus hard-core and child pornography's role in the assault on human dignity and the consequent dehumanization and abuse that it promotes. The devastating impact of hard-core and child pornography is the one issue that has drawn an immense variety of faiths and traditions together in agreement.

While continuing to strongly support and respect the freedoms of speech and expression as guaranteed by the First Amendment, RAAP members are in unanimous agreement that obscenity and child pornography, which are not protected by the Constitution, are life-endangering evils which must be eliminated.

As religious leaders, RAAP's primary objective is to teach and to motivate. As teachers, RAAP leaders use their pulpits and influence to proclaim the truth of human dignity and freedom, and to promote the God-given human values needed for the moral health of society.

RAAP supports the objectives of the National Coalition Against Pornography and the National Law Center for Children and Families and their efforts to pass and strengthen obscenity and child protection laws. It is also active on an international basis, helping facilitate efforts in Asia, Europe and South America to stem the role of pornography in the abuse and degradation of children, women, men and families.

In summary, RAAP is working to (1) create public awareness of pornography's destructive impact on society, to (2) help citizens in community and government leadership understand the moral, physical and social dimensions of sexual exploitation and illegal pornography, and (3) motivate citizens and faith groups to take appropriate action and responsibility in this regard.

The National Coalition Against Pornography

The National Coalition Against Pornography ("N-CAP") was founded in 1983 by Dr. Jerry R. Kirk to respond to the devastating impact of illegal obscenity and child pornography on America. N-CAP holds that these materials have a direct relationship to the skyrocketing incidence of rape, sexual

violence and child molestation in the United States. Numerous respected studies confirm this opinion.

N-CAP works to increase public awareness of the harm caused by obscenity and child pornography and to implement a number of programs designed to eliminate them from our society.

These programs include educational/training seminars designed to teach citizens and law enforcement officials how to rid their communities of illegal obscenity and child pornography. Other programs include: victim service development training; citizen coalition development and training; legal and law enforcement training on obscenity and child pornography investigations and prosecutions; extensive resource development and distribution, including a wide range of research reports documenting the harm of obscenity and child pornography; expert testimony for federal and state legislatures that are considering stronger obscenity and child protection laws. N-CAP founder, Dr. Jerry Kirk, provided testimony before both the U.S. House of Representatives and U.S. Senate in support of the Child Protection and Obscenity Enforcement Act of 1988.

Each of N-CAP's programs is active on a national basis, with specific involvement in dozens of local cities at any given time. N-CAP has also been instrumental in the development of a number of other related groups.

The fundamental mission and purpose of N-CAP is in protecting children and families through the elimination of child pornography and obscenity. N-CAP was formed as a result of a group of local citizens and clergy in Cincinnati, Ohio who had seen and counseled firsthand hundreds of families devastated by illegal pornography. N-CAP has provided substantial efforts nationwide in support of the

prosecution of obscenity-predicated RICO cases, including the case before the Court.

National Law Center for Children and Families

National Law Center for Children and Families ("National Law Center") is a Washington D.C. metro based organization dedicated to the protection of children and the preservation of families though the enforcement of existing laws and the promulgation of new legislation against illegal pornography and sexual exploitation.

Through the legal staff, resource library, and publications, the National Law Center actively participated in assisting courts, prosecutors, investigators, legislators, public officials, researchers, and parents to stop illegal pornography and its concomitant harms of sexual exploitation of children, women, and families.

Consultation with many county, city and civic leaders around the nation allows the National Law Center to assist in the drafting and enactment of new legislation. This legislation concerns obscenity, child pornography, materials harmful to minors and the appropriate time, place and manner regulation of sexually oriented businesses. The National Law Center is also involved in the dissemination of vital educational information about the extent and harm of pornography and sexual exploitation to legislators, law enforcement, public officials and concerned citizens alike.

Training seminars, newsletters, research data, updated prosecutors' manuals and on-site assistance are part of the National Law Center's strategy. This strategy is dedicated to equipping law enforcement with the necessary information, pleadings, and legal techniques necessary to win the war for our children and families.

The National Law Center has participated in numerous Amici Curiae briefs in cases that have a direct impact on children and family issues, including the recent Supreme Court cases of *Osborne v. Ohio* and *Jacobson v. United States*. Presently, the National Law Center is involved in publishing training materials and reference manuals on child sexual exploitation and child pornography. Its legal staff has conducted legal and law enforcement training for thousands of investigators and prosecutors since 1984.